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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---|------------------|
| 09/855,188 | 05/14/2001 | Raymond Jeffrey May | KCC-14,829 | 8199 |
| 35844 | 7590 | 07/30/2004 | | |
| PAULEY PETERSEN & ERICKSON 2800 WEST HIGGINS ROAD HOFFMAN ESTATES, IL 60195 | | | EXAMINER TORRES VELAZQUEZ, NORCA LIZ | |
| | | | ART UNIT | PAPER NUMBER |

1771

DATE MAILED: 07/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|--|-----------------------------------|--|
| Office Action Summary | Application No. 09/855,188 | Applicant(s) MAY ET AL. | |
| | Examiner Norca L. Torres-Velazquez | Art Unit 1771 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 and 50-74 is/are pending in the application.
- 4a) Of the above claim(s) 60-74 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 and 50-59 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>52404</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 10, 2004 has been entered.

Election/Restrictions

2. Newly submitted claims 60-74 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the product can be made by using pre-stretched filaments and adhering them to a facing material or the product can be made without applying tension to the filaments prior to bonding them to the facing material.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 60-74 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Response to Arguments

3. The rejection of claims 1-7, 13-15, 18, 20-21 and 50-59 under 35 U.S.C. 103(a) over MELBYE et al. (WO 95/34264) in view of CEDERBLAD et al. (US 5,885,686) has been withdrawn in view of Applicants amendment of independent claims 1 and 50 which now comprise the limitation of a barrier layer positioned between at least a portion of each of the first

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and second facing layers. The prior art of record fails to teach or suggest the inclusion of such layer in the structure.

4. The provisional rejection of claims 1, 2 and 21 the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 9 and 10 of copending Application No. 09/855,195 has been withdrawn in view of cancellation of claims 9 and 10 in the copending application.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-21 and 50-59 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 15, 18, 19, 21, 22 and 49 of copending Application No. 09/855,189 in view of CEDERBLAD et al. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending application no. 09/855,189 teaches having a low tension zone including a plurality of elastomeric first filaments and a high tension zone including a plurality of elastomeric second filaments, and a first facing layer. It is noted that both the '188 and the '189 applications comprise the presently claimed barrier layer. However, the '189 application claims the tension zones in terms of basis weight and the present application claims it in term of different elastomeric polymers.

CEDERBLAD et al. discloses an extruded bicomponent elastomeric netting having bi-directional elasticity. The reference teaches that the elastomeric netting comprises one set of extruded strands in one direction consisting essentially of a first elastic resin component and another set of transverse extruded strands consisting essentially of a second elastic resin component. The strands compositions of both sets of strands could be the same, could be of different components or could be a blend of resins. (Refer to claims 1-8)

While the CEDERBLAD et al. reference is directed to provide the material with different elastomeric properties in different directions, it is noted that the reference teachings of using different materials for the first and second strands in order to produce the different elastomeric properties is pertinent to the present invention and will provide the MELBYE et al. reference with an alternate embodiment that would provide the elastic material with different zones of

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elasticity by using two different elastomeric strands instead of producing this areas by increasing the quantity of strands in certain regions or using thicker and thinner strands.

With regards to claims 5 and 7, CEDERBLAD et al. further teaches the use of polyethylene as a processing aid resin in the polymer compositions. (Refer to claim 11) With regards to claims 8-12, it is the Examiner's position that the presently claimed elastic tension of the zones would have been inherent as a result of the use of different polymeric materials as taught by CEDERBLAD et al.

Reliance upon inherency is not improper even though rejection is based on Section 103 instead of Section 102. *In re Skoner, et al.* (CCPA) 186 USPQ 80

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to modify the elastomeric material and provide it with first and second strands of different compositions with the motivation of providing the material with different elastomeric properties in different directions as disclosed by CEDERBLAD et al. (Column 1, lines 24-25). Further, it would have been obvious to one ordinary skill in the art to use different polymeric materials in order to provide with regions of different basis weight since the basis weigh is dependent on the molecular weight of a material. For example, two filaments of same diameter and length made of different elastomeric polymers will have different basis weight due to their molecular weigh.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Norca L. Torres-Velazquez whose telephone number is 571-272-1484. The examiner can normally be reached on Monday-Thursday 8:00-4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Norca L. Torres-Velazquez
Examiner
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July 27, 2004